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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,739	04/06/2001	Jim Reich	540606-2001	9745
20999	7590	06/15/2006	EXAMINER	
FROMMER LAWRENCE & HAUG			BOYD, JENNIFER A	
745 FIFTH AVENUE- 10TH FL.			ART UNIT	
NEW YORK, NY 10151			PAPER NUMBER	

1771

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Applicant(s) 09/837,739	Applicant(s) REICH, JIM	
	Examiner Jennifer A. Boyd	Art Unit 1771	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 15 - 17, 19 - 21, 23 - 35.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 3. NOTE: The proposed amendment would require a further search/consideration for the limitations of claim 34.

Continuation of 11. NOTE: The arguments are not persuasive.

In regards to the arguments involving the 35 USC 112, 1<sup>st</sup> paragraph rejection, the arguments are based on the unentered amendment.

Applicant argues that Clark does not teach the invention, namely a fabric containing fibers having a denier ranging from 70 - 300. It should be noted that the amendment has not been entered. Additionally, the Examiner has not relied upon Clark to teach this particular limitation; instead, the Examiner has relied on Gurian to reject claims 29 - 33 which require the denier of the polyester to be between 70 - 300 denier (according to the proposed amendment).

Applicant argues Gurian does not disclose an upper limit for the amount of antimicrobial acetate fiber. Applicant argues that Gurian cannot be enabled for a fabric containing at least 25% by weight of acetate. It should be noted that Applicant's arguments cannot take the place of evidence.

Applicant argues that the Office Action has admitted that claim 34 is not obvious over Gurian and the amended language maintains the distinction between the present invention and Gurian. It should be noted that Gurian does not read on the limitations of claim 34 which have no support in the Specification. Applicant's proposed amendment would require further consideration/search and thus has not been entered.

Applicant argues that Gurian does not teach the limitations of claim 35. Claim 35 states that "the acetate fiber having blended therein an anti-microbial is effective as an anti-microbial after 200 industrial washings". In column 4, lines 65 - 68 and column 5 of Gurian, Gurian states that "the fabric according to the present invention is characterized by the ability to pass both the flame-retardancy tests and anti-microbial tests, both after a single commercial laundering and after 100 commercial launderings". It should be noted that Gurian states that the fabric is able to pass the anti-microbial test after 100 commercial launderings. The Examiner submits that this does not mean that the fabric would not pass the anti-microbial test after 200 commercial launderings as required by Applicant's claim 35. The Examiner submits that based on having the same physical and chemical characteristics that the ability to pass the anti-microbial test after 200 commercial launderings would be inherent to Gurian unless proven otherwise.

JB  
6/5/06

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